

Expires – September 30, 2010

Revisions (in italics) to Chapter 10 of the Local Assistance Procedures Manual (LAPM)

10.8 MISCELLANEOUS CONSIDERATIONS

RETAINING A CONSULTANT AS AN AGENCY ENGINEER

A local agency may retain qualified consultants on its staff in professional capacities such as agency consultant engineers, ~~or~~ architects, *or public agency officials such as City Engineer (or equivalent)*. The agency consultants can be an individual or a firm providing professional and/or management services.

Eligibility for federal and/or state reimbursement for ~~these~~ *local agency engineering (or equivalent)* services requires the following:

- Compliance with the selection procedures specified in this chapter.
- Existence of a contract between the local agency and the consultant specifying the *local agency engineering* services to be performed.
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer.
- *Completion by the consultant designated as an agency engineer of the conflict of interest for public agency officials "Form 700" as required by State law.*
- *For a State funded or Federal-aid project, completion of an "Exhibit 10-T Panel Member Conflict of Interest and Confidentiality Statement" form by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered.*
- *For a State funded or Federal-aid project, a local agency consultant in a management role shall not:*
 - *Participate in, or exercise authority over the A&E selection process, if that consultant's firm is one of the proposing firms, or a sub-consultant to a proposing firm.*
 - *Participate in, or exercise authority over management of work performed by the consultant's firm, or to a consultant's firm of which the local agency consultant firm is a sub-consultant. This would include, but not limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.*
 - *Apply for or receive reimbursement of Federal-aid funds for the local agency's Federal-aid project if either of the foregoing has occurred. However reimbursement for the construction contract portion of the project will still be allowed provided all other Federal-aid requirements have been met.*

- *For a State funded or Federal-aid project, completion of a “Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement” form by all consultant engineering staff in management positions that exercise authority over the A&E Selection Panel pertaining to the specific selection process and the firms being considered.*
- *A completed “Exhibit 10-U Consultant in Management Position Conflict of Interest and Confidentiality Statement” form shall be submitted to the District Local Assistance Engineer (DLAE) by the local agency concurrently with submitting the request for the funding authorization of an Architect Engineer contract which will contain Federal or State funds.*
- *Selection of consultants for management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates and awarded within the last ~~three (3)~~ five (5) years and if extended, only annually by contract amendments approved by the local agency Board of Supervisors, City Council etc.*

If engineering services for a project are within the scope of the services described in the retained consultant’s agreement, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for Federal and/or state reimbursement for these services require a new consultant agreement to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the Request for Proposal (RFP), or Request for Qualifications (RFQ) shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants are procured with State or Federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 49 CFR §18.36(b)(2) “...maintain a contract administration system....”; and (3) “...maintain a written code of standards.... No employee, officer or agent of the ...subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved....”
- Subparagraph of 23 CFR §172.9(d) “Consultant in management roles,” which requires that if a local agency has or intends to have a consultant in a management role (*except as the designated public official, City Engineer or equivalent, as provided for under the terms of the local agency contract*), the local agency shall receive approval from Caltrans. In addition, any Federal-aid projects designated as High Profile Projects, ~~approval~~ may also ~~be needed~~ approval from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.)

CONSTRUCTION ENGINEERING SERVICES

[The portion of Chapter 10.8 under this heading remains unchanged]